

International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), Local 244 and Massey-Ferguson, Inc. and Teamsters, Chauffeurs and Warehousemen Local 43, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. Case 30-CD-112

14 February 1984

DECISION AND DETERMINATION OF DISPUTE

BY CHAIRMAN DOTSON AND MEMBERS
ZIMMERMAN AND HUNTER

The charge in this Section 10(k) proceeding was filed 26 October 1983 by Massey-Ferguson, Inc., the Employer, alleging that the Respondent, Auto Workers Local 244, herein Local 244, violated Section 8(b)(4)(D) of the National Labor Relations Act by engaging in proscribed activity with an object of forcing the Employer to assign certain work to employees it represents rather than to employees represented by Teamsters Local 43, herein Local 43. The hearing was held 15 November 1983 before Hearing Officer Sharon A. Gallagher.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board affirms the hearing officer's rulings, finding them free from prejudicial error. On the entire record, the Board makes the following findings.

I. JURISDICTION

The Employer, a Maryland corporation, is engaged in the manufacture of agricultural implements, maintaining in connection therewith a parts distribution warehouse in Racine, Wisconsin. During the past year the Employer purchased and received goods valued in excess of \$50,000 directly from suppliers located outside the State of Wisconsin. The parties stipulate, and we find, that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that Local 244 and Local 43 are labor organizations within the meaning of Section 2(5) of the Act.

II. THE DISPUTE

A. Background and Facts of Dispute

The Employer's operations at its Racine warehouse consist of receiving, storing, and packing repair parts for distribution to dealers and to its regional parts distribution centers. Work at the warehouse is divided among two groups or units of employees: the Local 244-represented production and

maintenance employees who handle the day-to-day operations of the warehouse, and the Local 43-represented over-the-road drivers who transport the repair parts in semi-tractor-trailers to and from the warehouse.

The dispute arose when an over-the-road driver filed a grievance charging that certain "trailer switching"¹ and local intracity cartage work² being performed by the Local 244-represented production and maintenance employees at the Racine warehouse should be assigned to employees represented by Local 43. On 7 September 1983 a hearing was held before the Wisconsin Joint State Area Grievance Committee and the grievance was decided in favor of the work being assigned to Local 43.³ Local 244 was not a party to the grievance proceeding.

Upon learning of this decision Local 244 sent a telegram to the Employer threatening "appropriate contractual and legal action" should the work be reassigned to employees represented by Local 43. This telegram was later followed by a letter to the Employer, dated 5 October 1983, threatening "strike action" to enforce Local 244's jurisdiction over the switching and local cartage work. It was this strike threat which gave rise to the present proceedings.

B. Work in Dispute

The work in dispute involves trailer switching and local intracity cartage work at the Employer's Racine, Wisconsin warehouse.

C. Contentions of the Parties

The Employer contends that the area practice, its own past practice, the skill required, and the continued efficiency of its operations support an award of the work to Local 244.

Local 244 cites all these factors, as well as its collective-bargaining agreement with the Employer, in support of an award to the employees it represents.

Local 43 contends that the employees it represents are entitled to the disputed work by virtue of its collective-bargaining agreement with the Em-

¹ "Trailer switching" involves using a "switching tractor" (resembling an over-the-road tractor except that it has a weaker suspension system designed for only short runs and has an automatic rather than 13-speed overdrive transmission) to move trailers which have been dropped by the over-the-road drivers at the warehouse holding or "staging" area to the warehouse dock for loading or unloading.

² The local intracity cartage work involves pickups and deliveries to the bus station, post office, and to the Employer's other facility in Racine located about 5 minutes away. The switching tractor is often used for this local cartage work as well as for the actual switching work.

³ Under art. 44 of Local 43's Local Cartage Supplemental Agreement with the Employer all grievances may be taken to a joint state area grievance committee for resolution.

ployer and the Joint Grievance Committee's decision. It also asserts that the factors of company-wide practice, the skill required, and efficiency support an award to employees it represents.

D. Applicability of the Statute

Before the Board may proceed with a determination of the dispute pursuant to Section 10(k) of the Act it must be satisfied that there is reasonable cause to believe that Section 8(b)(4)(D) has been violated and that there is no agreed-upon method for the voluntary adjustment of the dispute.

Based on Local 244's strike threat, the record as a whole, and the parties' stipulation that there exists no agreed-upon method for the voluntary adjustment of the dispute, we find that there is reasonable cause to believe that a violation of Section 8(b)(4)(D) has occurred and that there exists no agreed-upon method for the voluntary adjustment of the dispute within the meaning of Section 10(k) of the Act. Accordingly, we find that the dispute is properly before the Board for determination.

E. Merits of the Dispute

Section 10(k) of the Act requires the Board to make an affirmative award of the disputed work after considering various factors. *NLRB v. Electrical Workers IBEW Local 1212 (Columbia Broadcasting)*, 364 U.S. 573 (1961). The Board has held that its determination in a jurisdictional dispute is an act of judgment based on common sense and experience, reached by balancing those factors involved in a particular case. *Machinists Lodge 1743 (J. A. Jones Construction)*, 135 NLRB 1402 (1962).

The following factors are relevant in making the determination of this dispute.

1. Collective-bargaining agreements

Both Local 244 and Local 43 have collective-bargaining agreements with the Employer and both contend that these agreements cover the disputed work. Local 244 cites a classification in its contract for a "semi-tractor trailer driver" and contends that this classification was intended to cover the employees who drive the switching tractor in doing switching and local cartage work. This contention is supported by the uncontroverted testimony of Gary Navis, the Racine warehouse manager, that this classification has been included in every contract with Local 244 since 1947 with the exception of a period between 1957 and 1968 when loading was done with railcars rather than semi-tractor-trailers. Navis also testified that from 1957 to 1968 local cartage was done by the warehouse employees with a straight (single piece) truck rather than with a semi-tractor-trailer.

Local 43 argues that the recognition clause of its current local cartage supplemental agreement with the Employer, its first such contract with the Employer, explicitly gives this work to the employees it represents. That clause states:

Article 40

SCOPE OF AGREEMENT

Section 1

Operations Covered

a) The execution of this Supplemental Agreement (hereinafter referred to as "Agreement") on the part of the Employer shall cover all truckdrivers, helpers, dockmen, warehousemen, checkers, powerlift operators, hostlers, and other such employees as may be presently or hereinafter represented by the Union, engaged in local pickup, delivery, and assembling of freight within the area located within the jurisdiction of the Local Union, not to exceed a radius of fifty (50) miles. . . .

b) Employees covered by this Agreement shall be construed to mean, but not limited to, any driver, chauffeur, or driver helper operating a truck, tractor, motorcycle, passenger or horse-drawn vehicle, or any other vehicle operated on the highway, street or private road for transportation purposes when used to defeat the purposes of this Agreement. The term employee also includes, but is not limited to, all employees used in dockwork, checking, stacking, loading, unloading, handling, shipping, receiving, assembling and allied work.

In addition Local 43 emphasizes the Joint Grievance Committee's award.

We find that both Unions have colorable contractual claims to the disputed work and that the factor of collective-bargaining agreement does not favor an assignment to either.⁴

2. Employer assignment and preference

The Employer has assigned the disputed work to employees represented by Local 244 since 1947 and prefers that this work continue to be performed by them. Although the over-the-road drivers might occasionally do switching work, this occurs no more than once a year when the switching tractor breaks down. Accordingly, we find the factors of

⁴ Inasmuch as Local 244 was not a party to the Joint Grievance Committee's proceeding, nor agreed to be bound by it, we have considered the award only for the limited purpose of interpreting Local 43's contract with the Employer.

employer assignment and preference favor an award to the employees represented by Local 244.⁵

3. Area practice

The other major agricultural implement warehouse in Racine, the J. I. Case Company, also assigns its switching and local cartage work to its production and maintenance employees rather than to its over-the-road drivers. The area practice thus favors an award of the work to employees represented by Local 244.

4. Efficiency of operations and job impact

The Employer argues that it is more efficient to assign the switching and local cartage work to employees represented by Local 244 because these employees also perform the other warehouse work, work which Local 43 does not claim in this proceeding. Warehouse Manager Navis testified that they could not in fact combine only the switching and local cartage work because of scheduling, delivery, and pickup times. He also testified, without challenge, that awarding the disputed work to Local 43 would cause layoffs in the production and maintenance unit. Accordingly, we find that both efficiency of operations and job impact favor an award to the employees represented by Local 244.

⁵ We reject Local 43's contention that the evidence it presented as to the Employer's practice at its other facilities throughout the country is sufficient to discount these factors. The only evidence presented was that at the Employer's operations in Detroit, Michigan, and Des Moines, Iowa, the disputed work has, at least since 1979, been assigned to over-the-road drivers. There was no evidence presented as to whether those operations were identical to those at the Racine warehouse. Thus we find the evidence insufficient to establish that the practice at the Racine warehouse is contrary to the companywide practice.

5. Relative skills

Based on the similarities between the switching and over-the-road tractors it is clear that both groups of employees are equally capable of performing the switching and local cartage work. We find that this factor does not favor an award of the disputed work to either.

Conclusions

After considering all relevant factors we conclude that employees represented by International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), Local 244, are entitled to perform the work in dispute. We reach this conclusion relying on the Employer's assignment and preference, the area practice, and considerations of efficiency and job impact. In making this determination we are awarding the work to employees represented by Local 244, not to that union or its members. The determination is limited to the controversy that gave rise to this proceeding.

DETERMINATION OF DISPUTE

The National Labor Relations Board makes the following Determination of Dispute.

Employees of Massey-Ferguson, Inc., represented by International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), Local 244, are entitled to perform the work of trailer switching and local intra-city cartage at the Employer's Racine, Wisconsin warehouse.